

CCRB INVESTIGATIVE RECOMMENDATION

| | | | | | |
|---|---|---------------------------|---|---|---------------------------------|
| Investigator: Alfredo Gonzalez | Team: Squad #3 | CCRB Case #: 201600251 | <input checked="" type="checkbox"/> Force | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input type="checkbox"/> Injury |
| Incident Date(s) Saturday, 01/02/2016 8:45 PM | Location of Incident: In front of § 87(2)(b) | Precinct: 67 | 18 Mo. SOL 7/2/2017 | EO SOL 7/2/2017 | |
| Date/Time CV Reported Sun, 01/03/2016 12:05 AM | CV Reported At: IAB | How CV Reported: Phone | Date/Time Received at CCRB Mon, 01/11/2016 6:19 PM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------------|--------------|
| § 87(2)(b) | § 87(2)(b) | § 87(2)(b) |

| Witness(es) | Home Address |
|-------------|--------------|
| § 87(2)(b) | § 87(2)(b) |

| Subject Officer(s) | Shield | TaxID | Command |
|-----------------------|--------|--------|---------|
| 1. SGT John Volkan | 2624 | 942677 | 067 PCT |
| 2. POM Michael Becker | 117 | 954892 | 067 PCT |
| 3. POM Ronnie Rivera | 10655 | 955385 | 067 PCT |
| 4. Officers | | | 067 PCT |
| 5. An officer | | | 067 PCT |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|---------------------------|-----------|--------|----------|
| 1. POM Miguel Vanbrakle | 28743 | 955616 | 067 PCT |
| 2. POM Peter Sarafian | 14698 | 957135 | 067 PCT |
| 3. POM Georgi Obreykov | 14606 | 956984 | 067 PCT |
| 4. POF Makaida Sealy | 06726 | 949649 | 067 PCT |
| 5. POM Michael Dechiaro | 25503 | 950288 | 067 PCT |
| 6. POM Michael Degregorio | 22345 | 945650 | ESS 07 |

| Officer(s) | Allegation | Investigator Recommendation |
|----------------------|---|-----------------------------|
| A.POM Michael Becker | Abuse: PO Michael Becker stopped § 87(2)(b) | § 87(2)(b) |
| B.POM Ronnie Rivera | Abuse: PO Ronnie Rivera stopped § 87(2)(b) | § 87(2)(b) |
| C. Officers | Force: Officers used physical force against § 87(2)(b) | § 87(2)(b) |
| D. An officer | Force: An officer used a chokehold against § 87(2)(b) | § 87(2)(b) |
| E.POM Michael Becker | Discourtesy: PO Michael Becker spoke discourteously to § 87(2)(b) | § 87(2)(b) |
| F.SGT John Volkan | Force: Sgt. John Volkan used a Taser against § 87(2)(b) | § 87(2)(b) |
| G. An officer | Force: An officer used physical force against § 87(2)(b) | § 87(2)(b) |

Case Summary

On January 3, 2016, Sgt. John Volkan of the 67th Precinct filed this complaint with IAB on behalf of § 87(2)(b) which generated IAB log #16-152.

On January 2, 2016, at approximately 8:45 p.m., PO Michael Becker and PO Ronnie Rivera of the 67th Precinct responded to a radio run in regards to a violation of an order of protection at § 87(2)(b) in Brooklyn. Upon arrival, PO Becker and PO Rivera observed § 87(2)(b) near the location on the sidewalk, walking away. The officers stopped § 87(2)(b) and PO Becker went into § 87(2)(b) to speak with the complainant, § 87(2)(b) (**Allegations A and B**). After receiving confirmation, PO Becker exited – and with the assistance of additional officers that had arrived at the scene – placed § 87(2)(b) under arrest. After being placed in handcuffs, § 87(2)(b) became combative and refused to go inside the RMP. The officers attempted to place § 87(2)(b) forcefully inside the RMP by pushing him and by grabbing his legs, but he actively resisted and refused to go inside (**Allegation C**). After § 87(2)(b) was placed partially inside the RMP, an officer allegedly put his arm around his neck and held him in that position for approximately five minutes (**Allegation D**). During those five minutes, two to three officers allegedly punched § 87(2)(b) in the face four to five times (**within Allegation C**). During the struggle inside the RMP, PO Becker allegedly called § 87(2)(b) a “pussy” three times (**Allegation E**). Sgt. John Volkan arrived at the location and ended the struggle by using a Taser against § 87(2)(b) which struck him in his back (**Allegation F**). Afterward, § 87(2)(b) was locked inside the RMP for approximately six minutes until an ambulance and ESU arrived. Afterward, an officer pulled § 87(2)(b) out of the RMP and allegedly kned him in the buttocks and testicles, placed him on the ground, and then restrained him in a “black blanket” (**Allegation G**). § 87(2)(b) was then transported to § 87(2)(b). § 87(2)(b) was arrested for § 87(2)(b).

This case went over the 90-day benchmark due to accommodating the schedule of § 87(2)(b)'s lawyer, § 87(2)(b), who requested to be present during the interview and for it to be done at Kings County Supreme Court.

Mediation, Civil and Criminal Histories

- This case was unsuitable for mediation due to § 87(2)(b)'s arrest.
- A Notice of Claim inquiry was submitted on April 18, 2016, and will be added to the case file upon receipt (Board Review 01).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s first CCRB complaint (Board Review 03).
- PO Becker has been a member of the NYPD for two years. This is his first CCRB complaint.
- Sgt. Volkan has been a member of the NYPD for nine years. He has been the subject of two previous cases with three allegations pleaded against him, one of which was substantiated. In CCRB 200903936, a refusal to provide name and shield number allegation was substantiated,

for which he received Command Discipline from the NYPD, which was the discipline recommended by the Board.

Potential Issues

- The investigation was unable to obtain medical records for § 87(2)(b) because he refused to identify himself to § 87(2)(b) staff, where he was treated, and therefore, there were no medical records linked to § 87(2)(b) on the date of the incident.
- The Medical Treatment of Prisoner Report was requested from the Brooklyn Court Section and the 67th Precinct. The Brooklyn Court Section did not have the report on file, and the 67th Precinct's request was returned with the statement: "to BCB for arraignment."

Findings and Recommendations

Explanation of Subject Officer Identification

- § 87(2)(b) identified PO Becker via his name and shield number, and attributed the discourteous language allegation solely to him.
- Sgt. Volkan acknowledged using his Taser against § 87(2)(b) § 87(2)(g) § 87(2)(b).
- § 87(2)(b) alleged that an officer whom he could not describe put his arm around his neck and placed him in a chokehold for approximately five minutes. All of the officers interviewed for this case denied that § 87(2)(b) was placed in a chokehold. § 87(2)(g) § 87(2)(g) § 87(2)(g).
- § 87(2)(b) also alleged that, while he was in a chokehold, two to three officers punched him in the face four to five times. § 87(2)(b) was unable to describe any of the officers that allegedly punched him, save for the fact that one of them was a white male with a “funny” accent. § 87(2)(g) § 87(2)(g) § 87(2)(g).
- § 87(2)(b) alleged that, after being tasered, an officer took him out of the RMP, kned him in the buttocks and testicles, and then placed him on the ground. § 87(2)(b) could not provide a physical description of the officer that allegedly committed the above-mentioned allegation. § 87(2)(g) § 87(2)(g) § 87(2)(g).

Allegations Not Pleaded

- § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- **Force:** § 87(2)(g) [REDACTED] § 87(2)(b) [REDACTED] never alleged that his breathing was restricted due to an officer's direct action, but instead described himself as being generally out of breath due to the struggle with the officers.

Allegation A – Abuse of Authority: PO Michael Becker stopped § 87(2)(b)

Allegation B – Abuse of Authority: PO Ronnie Rivera stopped § 87(2)(b)

§ 87(2)(b) alleged that he was walking away from § 87(2)(b) in Brooklyn towards 52nd Street when he observed a marked RMP pull up near him. PO Rivera and PO Becker then exited the RMP and commanded § 87(2)(b) to stop. Soon after, additional officers arrived to the location and surrounded § 87(2)(b) in a “V” formation while PO Becker entered § 87(2)(b). After a few minutes, PO Becker returned and signaled to the other officers to arrest § 87(2)(b) who was then placed in handcuffs. § 87(2)(b) recalled that he wore a white t-shirt, a black hoodie, black pants, and a “Rastafarian” hat on the date of the incident (Board Review 04).

PO Becker stated that he and PO Rivera received a radio call regarding a violation of an order of protection at § 87(2)(b). The radio run described the defendant as a black male wearing a black sweater and with an afro. Upon arrival, the officers observed a black male on the sidewalk that fit the description who was walking away from the building. The officers stopped § 87(2)(b) and explained to him why he was stopped. PO Rivera remained with § 87(2)(b) and PO Becker went inside § 87(2)(b) to speak with the female complainant. The female complainant showed PO Becker a valid order of protection, which gave PO Becker probable cause to arrest § 87(2)(b). The female complainant also named § 87(2)(b) by name and described what he was wearing. PO Becker exited the building and observed two to three additional officers at the scene. PO Becker then advised § 87(2)(b) that he was being placed under arrest for violating the order of protection (Board Review 07). PO Rivera’s testimony was consistent with PO Becker’s and did not differ in any significant way, except that he recalled that § 87(2)(b) was also described over the radio as a black male that was 6’ tall and 250 pounds (Board Review 06).

The Event Information document noted that the suspect who violated an order of protection was a black male that was 6’ tall, 250 pounds, with an Afro, and wearing a black sweater (Board Review 19). § 87(2)(b)’s arrest report lists him as being a black male that is 6’ tall and 230 pounds (Board Review 13).

An officer may stop an individual when he reasonably suspects that a person has committed, is committing, or is about to commit a crime. *People v. Debour*, 40 N.Y. 2d 210; 352 N.E. 2nd 562 (1972) (Board Review 20).

§ 87(2)(g)

Allegation C – Force: Officers used physical force against § 87(2)(b)

Allegation D – Force: An officer used a chokehold against § 87(2)(b)

After being placed in handcuffs, § 87(2)(b) alleged that an officer pushed him towards an RMP by grabbing the handcuffs’ chains and commanded him to “go.” § 87(2)(b) was then commanded to enter the RMP and pushed inside, head first. § 87(2)(b) indicated that the officers had trouble placing him inside the RMP, and he ended up inside on his side, partially

inside the vehicle. § 87(2)(b) stated that he was being treated “roughly,” which involved the officers pushing and pulling him into the RMP. § 87(2)(b) admitted to “fighting back” by moving his body around and kicking at the officers. When initially asked if his kicks had struck any of the officers, § 87(2)(b) stated that he was unsure, but later clarified that his kicks had not made contact. Besides the “fighting back” described above, § 87(2)(b) denied resisting arrest. While being placed inside the RMP, § 87(2)(b) alleged that an officer, whom he was unable to describe, placed him in a chokehold for approximately five minutes. At times, the officer also allegedly pulled back on his hoodie. When asked directly if the officers’ actions restricted his breathing, § 87(2)(b) was unable to give a definitive answer and simply stated that he had a “dry mouth” and was generally out of breath due to the struggle. During these five minutes, two to three other officers allegedly punched § 87(2)(b) in the face four to five times. § 87(2)(b) alleged that he sustained back pain, a headache, a swollen face, and a scratch between his chin and lower lip as a result of this incident. During his interview, § 87(2)(b) regularly referred to his interaction with the officers in the RMP as a “scuffle” (Board Review 04).

In her unverified phone statement, § 87(2)(b) stated that upon exiting her building, she observed that § 87(2)(b) was “almost a block away” and rear-cuffed. § 87(2)(b) emphasized several times that she was not wearing her glasses that night, so she could not clearly see what was happening. During the approximately two minutes that she was outside, § 87(2)(b) heard § 87(2)(b) screaming “as if he was getting hit or something,” but she also believed that he was resisting arrest. § 87(2)(b) did not see any officers use excessive force against § 87(2)(b) nor could she see the manner in which § 87(2)(b) was resisting; however, she was able to see that the officers were having some issues placing him inside the RMP. § 87(2)(b) also believed she heard “he bit me, or something like that,” from one of the officers. § 87(2)(b) could hear the officers, as well as some of the members of the crowd, telling § 87(2)(b) to calm down (Board Review 05).

PO Rivera stated that § 87(2)(b) initially resisted arrest by refusing to give up his arms, but he and PO Becker, along with the assistance of three other officers present, managed to put his hands together and to handcuff him. § 87(2)(b) then became more irate and combative, refused to walk to the RMP, moved his body around, and attempted to head-butt the officers. The officers then attempted to place § 87(2)(b) inside the RMP through the back passenger door, but § 87(2)(b) refused to go inside and put his leg on the door jamb to prevent the officers from placing him inside. § 87(2)(b) was commanded to calm down numerous times, but did not do so. The officers then grabbed § 87(2)(b)’s legs in order to prevent him from keeping his leg on the door jamb and from hurting them, at which point § 87(2)(b) began to kick at the officers. PO Rivera was kicked in the right thigh and left shin during this time, sustaining abrasions. The RMP did not have a partition, so PO Rivera went around and entered through the driver’s side to try to get § 87(2)(b) to sit down inside the vehicle. PO Rivera reached from the driver’s side and pulled down on § 87(2)(b)’s shoulders. At the time, § 87(2)(b)’s torso was partially inside the vehicle. As PO Rivera pushed down on his shoulders, § 87(2)(b) leaned forward and bit his right forearm, causing a laceration. § 87(2)(b) and PO Rivera were nearly “face-to-face” when § 87(2)(b) bit him. When Sgt. Volkan and his partner, PO Miguel Vanbrackle, arrived at the scene, the officers began to move § 87(2)(b) to a second RMP with a partition. § 87(2)(b) continued to be combative and continued to try to kick and head-butt the officers, so the officers grabbed him from the upper body and from his legs and carried him over to the second vehicle. § 87(2)(b) resisted getting inside this vehicle as well; however, the officers managed to get him fully inside the vehicle and to close the doors, though he was lying on his side. PO Rivera explained that the

officers grabbed his legs, placed him on his side inside the vehicle, and then pushed him further inside. PO Rivera denied that he, or any other officer, put his arm around § 87(2)(b)'s neck or pulled back on his hoodie when trying to place him inside any of the vehicles. PO Rivera denied that he, or any other officer, punched § 87(2)(b) in the face while trying to gain his compliance. PO Rivera did not observe any injuries on § 87(2)(b) and § 87(2)(b) did not complain of any. After § 87(2)(b) was fully contained, PO Rivera went to § 87(2)(b) to receive treatment for the bite, which "broke skin." PO Rivera did not require stitches, but was out Line of Duty for two days (Board Review 06).

PO Miguel Vanbrackle, PO Peter Sarafian, PO Michael Dechiaro, and Sgt. Volkan from the 67th Precinct were all interviewed for this case. The officers' statements were generally consistent, except where subsequently noted. PO Becker added that he was kicked multiple times in the torso by § 87(2)(b) while trying to place him inside the vehicle, but he did not sustain any injuries. PO Becker also emphasized that § 87(2)(b) was a large man and estimated that he was approximately 6'2" tall and 250 pounds (Board Review 07). PO Vanbrackle also noted that he was kicked in the face by § 87(2)(b) when he assisted in placing § 87(2)(b) inside the second RMP. PO Vanbrackle did not receive any medical treatment for the kick, but he noticed that his face was bruised the following day (Board Review 08). All of the officers interviewed denied that they, or any other officer, placed § 87(2)(b) in a chokehold or pulled on his hoodie. They also denied punching § 87(2)(b) in the face, and they did not observe any other officer do so (Board Review 09-11).

The Line of Duty Report for PO Rivera noted that § 87(2)(b) was violent and bit PO Rivera in the right forearm when the officers were attempting to place him inside an RMP, causing a laceration, an abrasion, swelling, and redness (Board Review 12). According to § 87(2)(b)'s arrest report, § 87(2)(b) attempted to kick the window out of an RMP and bit PO Rivera while he was being restrained, which caused a laceration (Board Review 13). § 87(2)(b)'s arrest photograph does not demonstrate any visible injuries (Board Review 14).

Only the amount of force necessary to overcome resistance will be used to effect an arrest. NYPD Patrol Guide, Section 203-11 (Board Review 21).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation E – Discourtesy: PO Michael Becker spoke discourteously to § 87(2)(b)

§ 87(2)(b) alleged that PO Becker entered the front seat of the RMP and called him a “pussy” three times while the struggle inside the RMP was occurring (Board Review).

PO Becker denied that he called § 87(2)(b) a “pussy,” or that he used any other type of discourteous language towards him (Board Review 07). All of the officers interviewed for this case also denied hearing PO Becker call § 87(2)(b) a “pussy,” and they did not use that profanity towards § 87(2)(b) themselves (Board Review 08-11).

§ 87(2)(g)

Allegation F – Force: Sgt. John Volkan used a Taser against § 87(2)(b)

It is undisputed that Sgt. Volkan used a Taser against § 87(2)(b)

§ 87(2)(b) admitted to fighting the officers by moving his body and kicking at them. § 87(2)(b) was inside an RMP, rear-cuffed, scuffling with the officers when it was ended by an officer striking him in the back with the Taser’s prongs. § 87(2)(b) could not recall if any commands or warnings were issued before the Taser was used (Board Review 04).

Sgt. Volkan testified that § 87(2)(b) continued to spit and kick at the officer after he was placed partially inside the second RMP. During the process of placing him inside the vehicle, Sgt. Volkan observed that § 87(2)(b) kicked PO Vanbrackle in the face and PO Becker in the chest. Because § 87(2)(b) had already injured one officer, and because he did not want additional injuries, Sgt. Volkan commanded § 87(2)(b) to stop kicking and spitting at the officers. § 87(2)(b) was unresponsive, so Sgt. Volkan warned him that he would use his Taser against him if he did not comply. § 87(2)(b) then told Sgt. Volkan, “I don’t care if you’re going to tase me. Go ahead.” Sgt. Volkan issued additional warnings, but § 87(2)(b) remained unresponsive. Sgt. Volkan then discharged his Taser for one cycle, with the prongs striking § 87(2)(b) in his back. Afterward, § 87(2)(b) calmed down for few minutes and the officers were able to close the RMP’s doors to finally secure his arrest. Sgt. Volkan then requested ESU to the location (Board Review 11).

§ 87(2)(g)

§ 87(2)(b) PO Becker and PO Rivera stated that the RMP’s doors were closed prior to § 87(2)(b) being tased. It was only after § 87(2)(b) began kicking at the RMP’s windows and doors that Sgt. Volkan warned him that he would use his Taser if he did not calm down. PO Becker also added that § 87(2)(b) was endangering himself in the back seat by kicking at the windows and by moving around while rear-cuffed. PO Dechiaro noted that the RMP’s doors were opened to prevent § 87(2)(b) from damaging the RMP, after which, Sgt. Volkan used the Taser against him; however, PO Dechiaro did not note whether the doors were closed again prior to ESU’s arrival. PO Degregorio of ESU

noted that the RMP's doors were closed when he arrived. PO Sarafian did not observe Sgt. Volkan use a Taser against § 87(2)(b) (Board Review 06-10).

The Less Lethal/Rescue Equipment Use Report and the Unusual Incident Report both corroborate the circumstances that led to Sgt. Volkan's use of the Taser (Board Review 15, 19).

A Taser may be deployed "against persons who are actively physically resisting, exhibiting active physical aggression, or to prevent individuals from physically injuring themselves or another person. The totality of the circumstances should be taken into consideration when deploying a conductive energy device: officer/subject disparity in terms of size, age, and strength, the officer's perception of the subject's willingness to resist, the officer's perception of the immediate threat to the subject, members of service, and bystanders, and the subject's violent history, if known." NYPD Patrol Guide, Section 212-117 (Board Review 16).

§ 87(2)(g)

§ 87(2)(g)

Allegation G – Force: An officer used physical force against § 87(2)(b)

§ 87(2)(b) alleged that after being locked in the vehicle, and after an ambulance had arrived, an officer pulled him out of the vehicle, kned him in the buttocks, turned him around, and then kned him in the testicles. Afterward, § 87(2)(b) was pushed to the ground in a controlled manner and was placed in a "black blanket" (Board Review).

PO Degregorio – whose unit included Det. Matthew Schmucker, Det. John Sylvestre, and Sgt. Brian Gulinello – was requested by Sgt. Volkan to the location to remove a resistant subject from the back of the RMP. PO Degregorio observed § 87(2)(b) sitting in the back of the RMP, rear-cuffed, yelling, and spitting. PO Degregorio recalled that there was some discussion about the RMP's window being kicked out or of § 87(2)(b) attempting to kick it out, but he could not recall if he witnessed it himself. PO Degregorio opened the RMP's door and explained to § 87(2)(b) that he needed to go to the hospital and that he was here to assist the officers in placing him inside the ambulance. PO Degregorio also told § 87(2)(b) that if he was compliant, they would allow him to stand up and to get on the gurney himself. § 87(2)(b) agreed. As soon as § 87(2)(b)'s "foot hit the ground," however, he became combative and "thrashed" his body so that the officers would not be able to hold him. At that point, the mesh restraint was placed on the ground, and § 87(2)(b) was taken to the ground and placed inside the mesh restraint. PO Degregorio, along with two ESU officers, assisted in placing § 87(2)(b) on the ground. PO Degregorio did not recall specifically how § 87(2)(b) was taken to the ground, but he believed officers grabbed his legs while another grabbed his torso. PO Degregorio did not observe any

injuries on § 87(2)(b) and § 87(2)(b) did not complain of any. PO Degregorio denied that he, or any other officer, kneed § 87(2)(b) in the buttocks and testicles after he was removed from the vehicle. While inside the mesh restraint, § 87(2)(b) continued to yell and to “scramble and thrash.” The officers then transferred § 87(2)(b) to a gurney, and he was placed inside an ambulance (Board Review 17).

No officers from the 67th Precinct assisted ESU in removing § 87(2)(b) from the vehicle. PO Dechiaro, PO Becker, PO Vanbrackle, and Sgt. Volkan were able to witness when ESU removed § 87(2)(b) from the vehicle. The officers did not observe any officer knee § 87(2)(b) in the buttocks or testicles after he was removed from the vehicle. PO Vanbrackle also corroborated PO Degregorio’s assertion that § 87(2)(b) became combative once more after being removed from the RMP. PO Dechiaro traveled to § 87(2)(b) with § 87(2)(b) and he noted that § 87(2)(b) continued to behave violently towards him and hospital staff (Board Review 07-08, 10-11).

The ESU Report noted that the “EDP prisoner was uncooperative and physically resisted efforts of crew, who placed EDP Prisoner in mesh restraint blanket” (Board Review 18).

Only the amount of force necessary to overcome resistance will be used to effect an arrest. NYPD Patrol Guide, Section 203-11 (Board Review 21).

§ 87(2)(g)

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Squad: _____

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date